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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/679,259 | 10/07/2003 | John J. Porter | 12562/5 | 4653 |

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EXAMINER

PRUNNER, KATHLEEN J

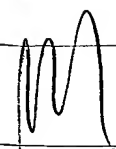
ART UNIT

PAPER NUMBER

3751

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--|---|--|
| Office Action Summary | Application No. 10/679,259 | Applicant(s) PORTER ET AL.  | |
| | Examiner Kathleen J. Prunner | Art Unit 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2003 and 08 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>100703; 030804</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. **Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.** If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
 - (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
 - (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
 - (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
 - (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
 - (f) BRIEF SUMMARY OF THE INVENTION.
 - (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
 - (h) DETAILED DESCRIPTION OF THE INVENTION.
 - (i) CLAIM OR CLAIMS (commencing on a separate sheet).
 - (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
 - (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).
2. The disclosure is objected to because of the following informalities: (A) the title, section headings and subheadings are in bold type; (B) the section headings and subheadings are

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underlined; (C) page 1, line 2 uses italics which is only permitted in Reissue applications; and (D) on page 1, lines 2-3 contain superfluous matter, i.e., the listing of inventors. Appropriate correction is required.

3. The following informalities in the specification are noted: (A) in the preliminary amendment filed October 7, 2003, in the amendment to paragraph 0014, on line 4, "/at" should read --at--; and (B) the status of the parent application should be updated. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmerman. Zimmerman discloses a breath freshening apparatus (note Figs. 7-10 and lines 3-4 in col. 1) having all the claimed features including a toothbrush 63 having bristles 64 and a reservoir (constituted by the squeeze bulb 61) containing mouthwash (note lines 3-5 in col. 6), and an atomizer (note lines 16-19 in col. 4) coupled to the reservoir 61 and the bristles 64 such that actuation of the atomizer, i.e., squeezing of the bulb 61, results in a mist being applied to the bristles 64. With respect to claim 5, Zimmerman also discloses that the reservoir 61 has resilient sidewalls such that lateral manipulation of the sidewalls results in actuation of the atomizer (note lines 58-60 in col. 2 and lines 16-19 in col. 4). With regard to claim 6, Zimmerman further discloses that the toothbrush includes a first housing (constituted by handle/stem 63) coupled to the bristles 64 and a second housing containing the reservoir (constituted by bulb 61) such that longitudinal manipulation of the housings relative to one another, i.e., holding the toothbrush by the handle 63 while flexing of the longitudinal sidewalls of the bulb 61, results in atomization of

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the atomizer (note lines 24-26 in col. 3 and lines 16-19 in col. 4). With regard to claim 7, Zimmerman additionally discloses that the housings have locking surfaces (constituted by cooperating threaded portions) to selectively prevent actuation of the atomizer (note Figs. 16 and 17, and lines 24-31 in col. 5). With respect to claim 8, Zimmerman also discloses a tumbler 76 which inherently constitutes a cap having an inboard end and an outboard end (note Fig. 8).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-4 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman in view of Mascitelli et al. With regard to claims 2 and 11, Zimmerman also discloses that the atomizer includes an induction tube (constituted by diameter portion 63') having a first end disposed within the reservoir (note Fig. 8). Although Zimmerman fails to disclose that the atomizer includes a pump, attention is directed to Mascitelli et al. who disclose another squeeze bottle or bulb having an atomizer in which the atomizer includes an atomizing pump 32 in order to ensure that a constant quantity of atomized liquid is dispensed with excellent atomization (note lines 47-51 in col. 4). It would have been obvious to one of ordinary skill in the squeeze bottle/bulb art, at the time the invention was made, to form the atomizer in Zimmerman with a pump in view of the teachings of Mascitelli et al. in order to ensure that a constant quantity of atomized liquid is dispensed with excellent atomization. With respect to claim 11, Zimmerman further discloses a tumbler 76 which inherently constitutes a cap having an inboard end, an outboard end and a ridge (note Fig. 8), and a delivery tube (constituted by passageway 65) disposed between the atomizer and the bristles 64.

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8. Claims 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman in view of La Flower. With regard to claim 9, Zimmerman further discloses that the cap 76 has a ridge 77 disposed within the cap 76. Although Zimmerman discloses that the cap is a tumbler for supplying liquid for rinsing of the mouth, attention is directed to La Flower who discloses another toothbrush having a cap 62 provided with a plurality of openings, apertures or vents 64 formed in the outboard end of the cap (note Fig. 1). It would have been obvious to one of ordinary skill in the toothbrush art, at the time the invention was made, to form the tumbler cap in Zimmerman with a plurality of venting apertures in view of the teachings of La Flower in order to permit for the circulation of air so that the brush can dry out and thus prevent bacterial growth.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman in view of La Flower as applied to claims 9 and 15 above, and further in view of Geremia-Nargi. Although Zimmerman fails to disclose that the cap has striated and smooth areas, attention is directed to Geremia-Nargi who discloses another cap structure 12 having a gripping portion 50 provided with a large number of vertical ridges 56 or striations disposed intermittently around its periphery with intervening smooth portions (note lines 20-24 in col. 3) in order to provide a sure gripping surface for the fingers. It would have been obvious to one of ordinary skill in the cap art, at the time the invention was made, to form the cap of Zimmerman with vertical ridges or striations disposed intermittently around its periphery with intervening smooth portions in view of the teachings of Geremia-Nargi in order to provide a sure gripping surface for the fingers especially when the fingers are wet as is likely during the brushing operation.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

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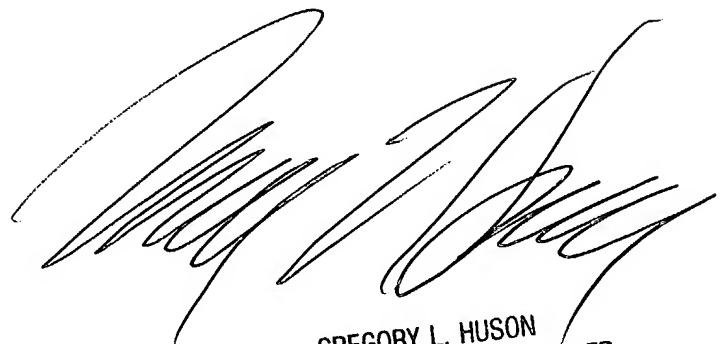
11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

June 22, 2004



GREGORY L. HUSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700